

DOCUMENT RESUME

ED 212 228

HE 014 719

AUTHOR Trent, Robert H.; Fendley, William R., Jr.
TITLE Some Comments on the Methods for Establishing Numerical Hiring Goals by Government Contractors as Required by Federal Regulations.
PUB DATE Oct 81
NOTE 19p.; Paper presented at the Joint Conference of the Southern Association for Institutional Research and the North Carolina Association for Institutional Research (Charlotte, NC, October 29-30, 1981).
EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Affirmative Action; *Compliance (Legal); Contracts; Employment Practices; *Equal Opportunities (Jobs); Evaluation Methods; *Federal Regulation; Females; Higher Education; Job Applicants; *Labor Utilization; Minority Groups; Personnel Policy; Quotas; Standards; Statistical Analysis; Surveys; Use Studies
IDENTIFIERS *Department of Labor

ABSTRACT

An affirmative action requirement for government contractors imposed in 1974 by the Office of Federal Contract Compliance Programs (OFCCP) of the U.S. Department of Labor is reviewed from the point of view of a government contractor, especially an institution of higher education. The eight factor analysis requirement is designed to provide the numerical availability standard against which the current utilization of minorities and females by job groups is compared, and to provide the basis of setting specific numerical hiring goals and timetables that are required in all affirmative action programs under current regulations. Seven specific issues regarding the eight factor analysis, which were announced in July 1981 for public comment, are examined, including: the question of which factors should be retained, altered, or dropped, and the usefulness of 1980 Census data for incorporation into the analysis of availability. It is proposed that the eight factor analysis requirement be eliminated and that revised regulations should provide: (1) that a contractor will perform a utilization and availability analysis of the job groups in its work force; (2) that availability estimates will be based primarily upon the principle of possession of requisite skills; (3) that such estimates will be determined by the contractor using documented and verifiable data; and (4) that such estimates may be subject to review for reasonableness by OFCCP. OFCCP should concentrate on developing national and state data for use by contractors as guidelines in determining availability estimates relevant to their workforces. An example of a university's numerical calculations required by OFCCP to derive availability estimates is appended. (SW)

* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *

ED0212228

SOME COMMENTS ON THE METHODS FOR ESTABLISHING
NUMERICAL HIRING GOALS BY GOVERNMENT CONTRACTORS
AS REQUIRED BY FEDERAL REGULATIONS

"PERMISSION TO REPRODUCE THIS
MATERIAL HAS BEEN GRANTED BY

William R. Fendley, Jr.

TO THE EDUCATIONAL RESOURCES
INFORMATION CENTER (ERIC)."

Robert H. Trent
Professor of Commerce
McIntire School of Commerce
University of Virginia

and

William R. Fendley, Jr.
Associate Director
Office of Resource and Policy Studies
University of Virginia

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)

- ☒ This document has been reproduced as
received from the person or organization
originating it.
☐ Minor changes have been made to improve
reproduction quality.

• Points of view or opinions stated in this docu-
ment do not necessarily represent official NIE
position or policy.

Presented at the Joint Conference of the
Southern Association for Institutional Research
and the North Carolina Association for Institutional Research,
Charlotte, North Carolina, October 29-30, 1981

Introduction

In the July 15, 1981 issue of the Federal Register, the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor announced that it anticipated proposing on or before August 26, 1981, revisions to certain OFCCP regulations regarding affirmative action requirements for Government contractors.¹ The purpose of the advance notice was to elicit the views of the public regarding certain issues affecting the contract compliance program. The purpose of this paper is to discuss one of the issues listed by OFCCP, and referred to as the "Eight Factor Analysis," from the point of view of a Government contractor, especially an institution of higher education.

The Eight Factor Analysis Requirement

The mandate for carrying out an eight factor analysis is contained in Section 2.11(b) of 41 CFR, Chapter 60, Subpart B - Required Contents of Affirmative Action Programs, and reads as follows:

(b) An analysis of all major job groups at the facility, with explanation if minorities or women are currently being underutilized in any one or more job groups ("job groups" herein meaning one or a group of jobs having similar content, wage rates and opportunities.) "Underutilization" is defined as having fewer minorities or women in a particular job group than would reasonably be expected by their availability. In making the utilization analysis, the contractor shall conduct such analysis separately for minorities and women.

(1) In determining whether minorities are being underutilized in any job group, the contractor will consider at least all of the following factors: (emphasis supplied)

- (i) The minority population of the labor area surrounding the facility;
- (ii) The size of the minority unemployment force in the labor area surrounding the facility;
- (iii) The percentage of the minority work force as compared with the total work force in the immediate labor area;
- (iv) The general availability of minorities having requisite skills in the immediate labor area;
- (v) The availability of minorities having requisite skills in

an area in which the contractor can reasonably recruit;

(vi) The availability of promotable and transferable minorities within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

(2) In determining whether women are being underutilized in any job group, the contractor will consider at least all of the following factors: (emphasis supplied)

(i) The size of the female unemployment force in the labor area surrounding the facility;

(ii) The percentage of the female workforce as compared with the total workforce in the immediate labor area;

(iii) The general availability of women having requisite skills in the immediate labor area;

(iv) The availability of women having requisite skills in an area in which the contractor can reasonably recruit;

(v) The availability of women seeking employment in the labor or recruitment area of the contractor;

(vi) The availability of promotable and transferable female employees within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills, and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to women.

There are two differences in the eight factors list for minorities as compared to that for females. Factor (i), the minority population of the labor area surrounding the facility, is not specified for females, and factor (v), the availability of women seeking employment in the labor or recruitment area of the contractor, is not specified for minorities. Otherwise, the factors are identical for both females and minorities.

It is difficult to overstate the importance of the eight factor analyses for institutions of higher education. The results of such analyses are used (1) to provide the numerical availability standard against which the current utilization of minorities and females by job group is compared and (2) to provide the basis for setting specific numerical hiring goals and timetables that are required in all affirmative action programs under current regulations. Any distortion in the availability calculations results in distorted hiring goals and timetables. It is imperative that such calculations be realistic and that they are understood to be at best only estimated guesses rather than precise measures of actual availability.

OFCCP Interpretations, Enforcement, and Current Position

Since the requirement for consideration of the eight factors for determining availability as included in the 1974 Revised Order No. 4 Affirmative Action Guidelines was imposed on contractors by OFCCP, considerable controversy has arisen regarding exactly how the eight factors should be considered in an affirmative action program. Various area and regional offices of OFCCP have differed widely in their interpretation of the meaning of the word consideration. It is clear, however, that the emphasis on numerical methods has generated a proliferation of increasingly complex techniques, requiring large expenditures of time and money to carry out.

Appendix A provides an example for one university of the complex set of numerical calculations required by OFCCP to derive availability estimates that were in turn carried forward to goals and timetables. The totality of these calculations for all job groups fills 127 typewritten pages, and the system to produce them cost an estimated \$150,000 to develop.

In the July 14 announcement referred to above, OFCCP listed seven specific questions regarding the eight factor analysis and requested public comment on them and on any additional issues with respect thereto that should be considered by

OFCCP. The deadline for such public comments was set for September 14, 1981.

Before addressing the seven questions raised, it is interesting to note that the proposed new regulations were published by OFCCP in the August 25, 1981 issue of the Federal Register (well before the September 14, 1981 deadline for public comment on the issues contained in the July 14 announcement.)² The position of OFCCP regarding the eight factor analysis requirement is revealed to be firm indeed. First, the proposed revised section 60-2.11, entitled "Required utilization analysis," includes paragraph (b) as follows:

- (b) An analysis of all major job groups at the facility, with explanation if minorities or women are currently being underutilized in any one or more job groups ("job groups" herein meaning one or a group of jobs having similar content, wage rates and opportunities). "Underutilization" is defined as having fewer minorities or women in a particular job group than would reasonably be expected by their availability. In the absence of other compelling circumstances as determined by the Director, an establishment shall be presumed to have reasonably utilized minorities and women, and shall not be required to explain if minorities and women are being underutilized or to establish goals and timetables, for job groups in which the employment of minorities and women is at least 80% of their availability. In making the utilization analysis, the contractor shall conduct such analysis separately for minorities and women. (emphasis supplied)

The above language is then followed by the eight factor analysis requirement quoted above from the existing regulations. Next, proposed revised section 60-2.12, entitled "Establishment of goals and timetables," includes paragraph (k) as follows:

- (k) Where the contractor has not established a goal, its written affirmative action program must specifically analyze each of the factors listed in section 60-2.11 and must detail its reason for lack of a goal.

The above language was carried forward intact from the existing regulations.

The net result is that while OFCCP has proposed a modification of the requirements for goal setting in affirmative action programs based upon an 80% utilization rate for minorities and females by job groups, it has not proposed any

modifications whatsoever to the eight factor availability analysis requirement, despite itself having raised serious questions regarding the matter.

Questions Raised By OFCCP

The July 14 announcement by OFCCP raised seven questions regarding the eight factor analysis. The remainder of this paper will discuss these questions in the order presented.

1. Which of the current eight factors should be retained as now written, which should be altered (and how), and which should be dropped entirely?

In seeking to determine a realistic estimate of the supply of people who may be available for a given job group, the eight factors for minorities and females may be worthy of some consideration. The fundamental problem is that OFCCP has, through its compliance review process, operationally defined the word "consider" to mean that the contractor must develop numerical measures for each factor and then assign a separate numerical weight to each factor. In other words, OFCCP has asserted that all eight factors are relevant to all job groups, irrespective of the kind of organization, and the burden is placed on the contractor to show otherwise. Thus, the contractor is forced to define "availability" strictly in terms of a bureaucratically imposed analytical framework that can produce "availability" numbers which are neither conceptually nor statistically meaningful for a particular job group or workforce. The artificially defined "availability" is then carried forward to the utilization analysis and used to calculate "underutilization" which becomes the standard for establishing hiring goals and setting timetables to meet these goals.³

It is clear that the eight factors are neither conceptually nor numerically exclusive. Any attempt to place a separate numerical weight on each factor will uniformly inflate the availability estimates by double counting and

result in unrealistic goals. The only factor that represents a fair standard against which an employer should be judged is the proportion of minorities and women having the requisite skills in the relevant labor area. Using other artificial and irrelevant "availability" factors and assigning them numerical weights fundamentally distorts the analysis of a workforce.⁴

For example, with respect to instructional faculty, the data utilized for minority and female availability pools are conventionally based upon the most recently published national degree productivity data and thus include: (a) the composition of the faculty workforce (employed or unemployed) for any given discipline, (b) the composition of the faculty workforce that could apply for a position, but who currently work in a related occupation, and (c) the composition of the faculty workforce who are "readily trainable" for given positions.⁵ Since these factors are implicit in the degree productivity data, there is no need to weight them separately. The remaining factors are clearly not relevant to faculty positions. Additionally, such data assume that all recent Ph. D.'s are equally "available" to come to a particular institution if recruited. It is also clear that all recent Ph.D.'s do not choose to go into academic careers. The availability data for entry level appointments, based as they are on all Ph.D.'s conferred during a particular period, make no distinction as to the quality of Ph.D. programs. For some institutions, this is especially relevant.

The response to this question then is that the eight factor analysis requirements as specified by OFCCP should be eliminated from the regulations and in their place the requirement should simply be that a contractor would carry out a utilization analysis for minorities and females by job group using documented and verifiable estimates of the supply of people who may be available for such jobs based on the principle of possession or requisite skills. Such a requirement leaves the contractor free to develop realistic estimates (provided they can be defended)

appropriate to job groups that make up the work force of a particular organization. It would eliminate the forced creation of an extensive set of calculations based upon artificially imposed factors developed for the sake of uniformity. It would lead to a higher degree of voluntary compliance by contractors.

2. The 1980 Census should provide considerably improved information about the participation of women and minorities in various occupational groups. How should the 1980 Census be incorporated into the analysis of availability?

Baseline estimates of population characteristics such as age, race, sex, education, occupation, etc., should, of course, come primarily from Census data. It is inconceivable that contractors should be required to develop such information independently. OFCCP should focus on providing summary data at the national and state level for the use of contractors. Many states are already creating city and county estimates of minority and female participation rates in various occupations from Census data. OFCCP should work closely with state officials in this area, particularly in developing data for local use.

It should be pointed out that participation rates are not identical to availability rates. They do provide extremely useful information about the representation of minorities and females actually in the workforce at the time the Census is taken. Contractors should obviously be aware of the changes in participation rates when developing their affirmative action programs.

3. A consistent problem in determining availability is the currency of data. What methods should contractors and OFCCP use to update data each year?

This is an area that OFCCP should focus its attention on with the view to assisting contractors. OFCCP should provide national and state summaries of participation rates derived from Census data. In addition, summaries of such rates by industry and job groups taken from annual statistical reports (EEO reports) filed

by contractors should be prepared by OFCCP and made available to contractors on a periodic basis. These summaries, together with analyses of significant changes or trends, should be provided as guidelines for affirmative action program maintenance.

Contractors should not be required to update availability data annually, unless there is sufficient evidence that source data has changed significantly in one year. A complete revision of availability estimates annually is a totally impractical requirement since they are based primarily on Census data. Other types of potential availability data, such as unemployment data, should be reviewed, summarized by OFCCP, and provided to contractors. OFCCP should work closely with state agencies to develop ways to update state and local data.

4. Should OFCCP consider establishment of standardized job groups (e.g., the occupational categories for which information was gathered for the 1980 Census)? If so, will there be problems in establishing current data for these categories?

In the first place, OFCCP should resist the urge to impose on contractors standardized job groupings. The current EEO category structure for job groupings should be the overall framework within which contractors should analyze their workforces.⁶ The use of subgroups within those categories should be at the discretion of the contractor, depending on the nature of the organization. It is unrealistic to expect contractors to establish current availability data for numerous occupational categories.

5. Should contractors attempt to establish some comparative value or "weight" to each of the several factors considered? The regulations do not require contractors to assign "weights" to the various factors, but the Federal Contract Compliance Manual permits OFCCP compliance staff to accept "weighting" as a method for determining availability. What consideration, if any, should be given to quantitative comparisons--such as "weighting"--of factors used to determine availability? Should OFCCP require a weighted factor analysis or some other specific system? If no one system is required, what evidence should contractors be expected to produce to demonstrate the reliability and integrity of the system which they adopt?

Although the regulations do not require "weighting" the eight factors, OFCCP compliance staff have strongly urged such weighting schemes on contractors (see Appendix A, for example) and they have challenged the use of a zero value "weight" for any factor, even though the factor was considered to be irrelevant with respect to a particular job group. Forcing such artificial and arbitrary "weights" to be assigned to each factor makes the derived availability estimates meaningless from both a practical and statistical standpoint. Consequently, OFCCP should abandon the eight factor analysis requirement and discontinue urging weighting schemes on contractors. The contractor should be required only to provide an explanation of how its availability estimates are derived for each job group in the work force. OFCCP should provide national and state data summaries obtained from Census data and EEO reports for use as guidelines by contractors. The role of OFCCP should change from that of forcing a specific system on all contractors to working cooperatively with contractors through providing them with updated data about the composition of the relevant labor force.

6. In assessing availability, what consideration should be given to factors reflecting the potential availability (e.g., the number of minorities or women in training programs) in addition to current availability (e.g., requisite skill data)? How can potential availability be calculated and demonstrated?

It is simply unreasonable to require contractors to calculate and demonstrate potential availability in addition to estimating current availability. Except where a training program is carried out within the organization or otherwise under the direct control of a particular contractor, there is just no way to predict potential availability with any degree of reliability.

7. If the availability analysis is limited to factors describing current availability, what steps, if any, can the contractor undertake to increase the participation of women and minorities in occupations in which they traditionally have not been employed?

This question is not directly related to the issue of the imposed eight factor analysis. It is related to the issue of a contractor's commitment to seek to employ women and minorities in job groups or occupations in which they have traditionally not been employed after assessing both utilization and availability. Such actions might include training programs, where feasible, as well as establishing internal practices to insure that women and minorities are encouraged to seek such jobs and that they are given serious consideration by the hiring unit within the contractor's organization.

Summary of Recommendations

Based on the above discussion, it is the authors' view that the eight factor analysis requirement (sections 60-2.11(b) and 2.12(k) of 41 CFR, Chapter 60) should be eliminated from the new regulations now under revision by OFCCP. The revised regulations should simply provide: (1) that a contractor will perform a utilization and availability analysis of the job groups in its work force, (2) that availability estimates will be based primarily upon the principle of possession of requisite skills, (3) that such estimates will be determined by the contractor using documented and verifiable data, and (4) that such estimates may be subject to review for reasonableness by OFCCP.

OFCCP should concentrate its efforts on developing national and state data for use by contractors as guidelines in determining availability estimates relevant to their workforces. We believe such a cooperative effort, rather than strict imposition of an artificial analytical framework, would result in a higher level of voluntary compliance with Executive Order No. 11246 as originally conceived.

Finally, we believe that those who are directly affected should not hesitate to question the reasonableness and practicality of regulatory requirements imposed by the Federal (or any other) bureaucracy in the course of implementing public policy. The issue of the eight factor analysis requirement discussed above is only one example.

FOOTNOTES

- ¹ Federal Register, Vol. 46, No. 134, Tuesday, July 14, 1981, pp.36213-16. The Department of Labor proposes to revise the regulations at 41 Code of Federal Regulations, Chapter 60, which implement (1) Executive Order 11246, as amended, (2) section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 and (3) section 503 of the Rehabilitation Act of 1973, as amended.
- ² Federal Register, Vol 46, No. 164, Tuesday, August 25, 1981, pp.42967-43017.
- ³ What is particularly alarming is that one court has recently ruled that an affirmative action program showing such "underutilization" calculations may be used by a complainant to support a claim of discrimination. See EEOC v. Keco Industries, Inc., 617 F. 2nd 443 (6th Cir. 1980), Cert. Denied, 101 S.Ct. 267 (1980).
- ⁴ The principle of possession of requisite skills as the standard against which utilization rates should be compared has been well established by the Supreme Court. See Hazelwood School District v. United States, 433 U.S. 299, 308 (1977) and Teamsters v. United States, 431 U.S. 324 (1977).
- ⁵ A very good data source for faculty is Professional Women and Minorities (last updated February 1981), a manpower data resource service of the Scientific Manpower Commission, American Association for the Advancement of Science, Washington, D.C.
- ⁶ The EEO job categories are: Executive/Administrative/Managerial, Professional-Non-Faculty, Secretarial/Clerical, Technical/Paraprofessional, Skilled Crafts, Service/Maintenance, and Faculty.

APPENDIX A

CHART 1-A
AVAILABILITY FACTOR COMPUTATION FORM
(Revised Order 4)

EEO-1 CATEGORY 01-Exec/Admin/Mgr
JOB GROUP Business & Finance

Availability Factors	Raw Statistics			Value Weight			Weighted Factor			Source and Reason for Statistic and Weighting Factor
	Blacks	Minorities	Female	Blacks	Minorities	Female	Blacks	Minorities	Female	
1. (a) The minority population of the labor area surrounding the facility. OR 1. (b) The availability of women seeking employment in the labor or recruitment area of the contractor.	.172	.184		0	0		0	0		Source and Reason for Statistic and Weighting Factor: Labor Market Information For Affirmative Action Programs, State of Virginia 1979, Supplement Based on 1978 Data, Virginia Employment Commission. Appendix, p. 11.
2. The size of the minority (or female) unemployment force in the labor area surrounding the facility.	.270	.279	.405	0	0	0	0	0	0	Not applicable to recruitment.
3. The percentage of the minority (or female) workforce as compared with the total workforce in the immediate labor area.	.159	.172	.395	0	0	0	0	0	0	Ibid.
4. The general availability of minorities (or women) having requisite skills in the immediate labor area.	.014	.014	.173	.10	.10	.10	.001	.001	.017	Not applicable to recruitment.
5. The availability of minorities (or women) having requisite skills in an area in which the contractor can reasonably recruit.	.044	.044	.304	.50	.50	.50	.022	.022	.152	Ibid., Appendix, p. iv.
6. The availability of promotable and transferable minorities (or female employees) within the contractor's organization.	.031	.037	.403	.30	.30	.30	.009	.011	.121	Local and internal recruitment.
7. The existence of training institutions capable of training persons in the requisite skills.	0	0	0	0	0	0	0	0	0	Professional Women and Minorities, Scientific Manpower Commission, Jan., 1980, p. 44.1/National recruitment.
8. The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities (or women).	.033	.033	.370	.10	.10	.10	.003	.003	.037	UVA Statistical Report, Part I, Table 8.
Final Availability Factors										Internal promotions and transfers.
										Not applicable for this EEO category.
										See computer printout on training of personnel.
										Internal training conducted.

SOURCE: The availability factors, as they appear on this form, are specified in 41 CFR Chapter 60 - Office of Federal Compliance Programs, Equal Employment Opportunity, Department of Labor [41 CFR 60-2.11 (b) (1) and (2)].

CHART 1

AVAILABILITY AND UTILIZATION ANALYSES
UNIVERSITY OF VIRGINIA
[41 CFR 60-2.11 (b)]

01-Executive/Administrative/Managerial
(EEO Category)

All Charlottesville Agencies
(College/School or Organizational Unit)

Effective March, 1981
(Period For Which Data Were Prepared)

Division or Unit or Job Group	Division/Unit/Job Group Statistics					Availability ^d			Utilization Analyses							
	(1)		(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	
	(a)N	(b)Σ	Total	Male	Female	Black	All Minority	Percent of Female	Percent of Black	Percent of All Minority	Utilization Factor (%)			Number Underutilized		
											Female [(3b)-6]	Black [(4b)-7]	All Minority [(5b)-8]	Female	Black	All Minority
Business and Finance ^a	N	97	57	40	7	7	32.7	4.4	4.4	8.5	2.8	2.8	0	0	0	
	X	100.0	58.8	41.2	7.2	7.2										
Non-Business & Finance ^b	N	263	162	101	10	14	34.6	10.7	10.7	3.8	(6.9)	(5.4)	0	18	14	
	X	100.0	61.6	38.4	3.8	5.3										
Health Related ^c	N	79	46	33	2	3	46.5	7.6	7.6	(4.7)	(5.1)	(3.8)	4	4	3	
	X	100.0	58.2	41.8	2.5	3.8										
Total	N	439	265	174	19	24	--	--	--	--	--	--	4	22	17	
	X	100.0	60.4	39.6	4.3	5.5										

^aIncludes job group A positions listed in Employment Analysis computer printouts.

^bIncludes job group B positions listed in Employment Analysis computer printouts.

^cIncludes job group C positions listed in Employment Analysis computer printouts.

^dSee Availability Factor Computation Forms for EEO Category 01.

CHART 1-1
GOALS AND TIMETABLES
UNIVERSITY OF VIRGINIA
[41 CFR 60-2.12]

01-Executive/Administrative/Managerial

(EEO Category)

Business and Finance

(Job Group)

Effective March, 1981

(Period For Which Data Were Prepared)

Utilization Analysis		Total (A)	Male (B)	Female (B)	Black (C)	All Minorit (D)
1. Current Number of Employees		97	57	40	7	7
2. Workforce percentage (from current workforce analysis)		100.0	58.8	41.2	7.2	7.2
3. Availability percentage (from availability and utilization analyses)		100.0	67.3	32.7	4.4	4.4
4. Number required for parity (row 3 x 1A)		97	65	32	4	4
5. Percentage required for parity (row 4 ÷ 4A)		100.0	67.3	32.7	4.4	4.4
6. Number underutilized (row 4 - row 1)		XXXX		0	0	0
7. Annual Goal (Based on expected opportunities during 1981-82)	N	NA		NA	NA	NA
	%					
8. Long-range employment goal percentage (Date:)		NA		NA	NA	NA